IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02/12/2003

CORAM

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

C.M.S.A.No.6 of 2003

A.M.Abdul Kareem .. Appellant

-Vs-

The Special Tahsildar
Adi Dravidar Welfare
Maduranthagam Town & Taluk
Kancheepuram District. .. Respondent

PRAYER: Against the judgment and decree of the learned Subordinate Judge of Maduranthagam dated 18.1.2001 in H.W.C.M.A.No.43 of 1998 enhancing the compensation to Rs.500/- per cent as against the award of the Special Tahsildar Adi Dravidar Welfare, Maduranthagam dated 27.3.19 96 in Award No.9 of 1995-1996 fixing Rs.300/- per cent.

!For Appellant : Mr.V.Nicholas

^For Respondent : Mr.S.Shivashanmugam
Government Advocate

:JUDGMENT

The above appeal is directed against the judgment and decree of the learned Subordinate Judge of Maduranthagam dated 18.1.2001 in H.W.C. M.A.No.43 of 1998 enhancing the compensation to Rs.500/- per cent as against the award of the Special Tahsildar Adi Dravidar Welfare, Maduranthagam dated 27.3.1996 in Award No.9 of 1995-1996 fixing Rs.300/- per cent.

2. The respondent, while fixing the award amount at the rate of Rs.3 00/- per cent with respect to the acquisition of land of an extent of 2.67 Acres (1.08.0 Hectares) which is located in Survey Nos.13/5 (0.56.5 Hectares) and 29/6A-I (0.51.5 Hectares) in Manikuppam Village, Cheyyur Taluk, Kancheepuram District, acquired under the provisions of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1 978 for the purpose of providing 64 house sites to Adi Dravidars of Manikuppam Village, Cheyyur Taluk, Kancheepuram District, pursuant to the notification under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978 dated 6.2.1996, which was published in the gazette on 9.2.1996, in his p roceedings dated 27.3.1 996 in Award No.9/1995-96, placed reliance on the sale

deed dated 27.4.1993, whereunder an extent of 0.51.0 Acres in Survey No.38/3 was sold for a sum of Rs.15,300/-.

3. Aggrieved by the said award dated 27.3.1996 fixing compensation at the rate of Rs.300/- per cent, the appellant herein preferred an appeal before the Subordinate Judge, Maduranthagam in H.W.C.M.A.No.43 of 1998 claiming a sum of Rs.5000/- per cent, placing reliance on Exs.C1, C2 and C3, dated 4.10.1995, 5.10.1995 and 25.9.1992 respectively. Ex.C1, dated 4.10.1995, is with reference to the sale of land of an extent of 650 Sq.ft. situated in Survey No.13/5 by Mr.Abdul Kareem Saheb in favour of Mr.A.M.Ameer for a sum of Rs.3,250/-. Ex.C2, dated 5.10.1995, is with reference to the sale of land of an extent of 10 cents situated in Survey No.12/3 by Mrs.Chenal Bi in favour of Mr. Khader for a sum of Rs.13,080/-. Ex.C3, dated 25.9.1992, is with reference to the sale of land of an extent of 3 cents situated in Survey No.12/3 by Mrs.Shagara Bi in favour of Mr.Abdul Majeed for a sum of Rs.3270/-.

4. The learned Subordinate Judge, Maduranthagam, however refused to consider the Exs.C1, C2 and C3 relied upon by the appellant herein, but enhanced the compensation from Rs.300/- per cent to Rs.500/- per cent and modified the award dated 27.3.1996 passed by the respondent herein in Award No.9/1995-96. Hence, the present civil miscellaneous second appeal.

5. This appeal was admitted on the following substantial questions of law:

(1) When the land which is adjacent to the acquired land was sold at the rate of Rs.1300/- per cent under the sale deed dated 5.10.1995 and marked as Ex.C2, whether the Court below is correct in ignoring the sale deed and fixing a compensation of Rs.500/- per cent which is contrary to the evidence on record?

(2) When it is found that the acquired land situated adjacent to the road and land in S.No.13 were sold as house sites, whether the Court below is correct in fixing the compensation at Rs.500/- per cent instead of fixing the compensation at Rs.1300/- per cent?

6. Mr.V.Nicholas, learned counsel for the appellant contends that Exs.C1, C2 and C3, dated 4.10.1995, 5.10.1995 and 25.9.1992 respectively are executed prior to the notification dated 6.2.1996 issued under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978 and therefore, there is no justification in not considering the same while fixing the award amount.

7. Per contra, Mr.S.Shivashanmugam, learned counsel for the respondent contends that Exs.C1, C2 and C3 dated 4.10.1995, 5.10.1995 and 25.9.1992 respectively, are even though executed prior to the notification dated 6.2.1996 issued under Section 4(1) of the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978, the said transactions took place only after a notification under Section 4(1) of the Land Acquisition Act, 1894 was issued on 7.7.1995. Hence, it is contended that both Exs.C1 and C2 dated 4.10.1995 and 5.10.1995 respectively, are concocted for the purpose of claiming more award amount than what was worth for the land acquired. With

respect to Ex.C3, it was contended that the sale had taken place on 25.9.1992, prior to the impugned acquisition proceedings both under the Land Acquisition Act and the Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1 978 and therefore, no reliance could be placed on the same.

8. I have given careful consideration to the submissions of both sides.

9. It is no doubt true that courts adopt comparable sales method of valuation of land while fixing the market value of the acquired land. While fixing the market value of the acquired land, comparable sales method of valuation is preferred than other methods of valuation of land such as capitalisation of net income method or expert opinion method. Comparable sales method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of notification under Section 4 of the Act. However, comparable sales method of valuation of land for fixing the market value of the acquired land is not always conclusive. There are certain factors which are required to be fulfilled and on fulfilment of those factors the compensation can be awarded, according to the value of the land reflected in the sales. The factors laid down inter alia are: (1) the sale must be a genuine transaction, (2) that the sale deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Act, (3) that the land covered by the sale must be in the vicinity of the acquired land, (4) that the land covered by the sales must be similar to the acquired land, and (5) that the size of plot of the land covered by the sales be comparable to the land acquired. If all these factors are satisfied, then there is no reason why the sale value of the land covered by the sales be not given for the acquired land. However, if there is a dissimilarity in regard to locality, shape, site or nature of land between land covered by sales and land acquired, it is open to the court to proportionately reduce the compensation for acquired land than what is reflected in the sales depending upon the disadvantages attached with the acquired land, vide Shaji Kuriakose v. Indian Oil Corpn. Ltd.,(2001) 7 SCC 650.

10. It is true, in the fixation of rate of compensation under the Land Acquisition Act, there is always some element of guesswork. But that has to be based on some foundation. It must spring from the totality of evidence, the pattern of rate, the pattern of escalation and escalation of price in the years preceding and succeeding Section 4 notification etc. In other words, the guesswork could reasonably be inferable from it. It is always possible to assess the rate within this realm, vide Land Acquisition Officer v. B. Vijender Reddy,(2001) 10 SCC 669.

11. In the present case, we find there is one exemplar i.e. Exhibit C-3 which is three years preceding the date of notification made under Section 4(1) of the Land Acquisition Act, viz., 7.7.1995. If that be so, I am unable to appreciate the reason given by the learned Subordinate Judge, Maduranthagam in not considering Ex.C3, dated 25.9.19 92 that the said document, Ex.C3, was executed much earlier to the impugned acquisition proceedings, as the bonafide

of Ex.C3, dated 25.9 .1992 was not complained or doubted.

12. Hence, in my considered opinion, since the bonafide of Ex.C3, dated 25.9.1992 was not complained or doubted, the same has to be taken into consideration for fixing the award amount, particularly when the sale under Ex.C3, dated 25.9.1992 is with reference to land located in Survey No.12/3, which is adjacent to the impugned land, which is located in Survey No.13/5.

13. As per Ex.C3, dated 25.9.1992, 3 cents of land in Survey No.12/3 was sold at Rs.3270/-, viz., at the rate of Rs.1090/- per cent. Therefore, the Court below ought to have passed an award at the rate of Rs.1090/- per cent. Hence, answering the substantial questions of law accordingly, the award passed by the respondent dated 27.3.1996 in Award No.9/1995-96 as modified by the judgment and decree of the learned Subordinate Judge of Maduranthagam dated 18.1.2001 in H.W.C.M.A. No.43 of 1998 is modified directing the respondent herein to pay compensation at the rate of Rs.1090/- per cent for the entire extent of 2.67 Acres (1.08.0 Hectares) with interest at the rate of 6% per annum and solatium at the rate of 15% per annum from the date of award.

This appeal is ordered accordingly. No costs.

Index :Yes
Internet:Yes

sasi

To:

1. The Subordinate Judge
Maduranthagam.

2. The Special Tahsildar
Adi Dravidar Welfare
Maduranthagam Town & Taluk
Kancheepuram District.

□